

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2927**

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**Introduced by Assembly Member Leno**

February 24, 2006

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~~An act to amend Section 2620 of the Business and Professions Code, relating to healing arts. An act to amend Sections 6258 and 6259 of, and to add Sections 6253.3 and 6259.1 to, the Government Code, relating to public records.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2927, as amended, Leno. ~~Physical therapy.~~ *Public records.*

*The California Public Records Act requires state and local agencies to make their records available for public inspection and, upon request of any person, to provide a copy of any public record unless the record is exempt from disclosure.*

*This bill would require any state agency that publishes an Internet Web site to include on the homepage of that site specified information about how to contact the agency, how to request records under the act, a form for submitting online requests for records, agency officials' statements of economic interests, agency officials' employment or consulting contracts, the terms of litigation settlements, copies of records disclosed under the act, and copies of letters of other communication denying a request for a record. It would authorize any person to bring an action to enforce the duty of a state agency to post this information and would provide for penalties including monetary awards to be paid by agency officers or employees in specified circumstances.*

~~Existing law, the Physical Therapy Practice Act, licenses and regulates physical therapists by the Physical Therapy Board of California, and provides that a violation of the act is a crime. Existing law defines physical therapy for purposes of the act.~~

~~This bill would specify that nothing in the act prohibits an individual not licensed or registered under the Medical Practice Act from providing assistance and advice to a consumer regarding physical fitness, including developing training regimens. The bill would also require the individual to make certain disclosures to the consumer regarding any medical conditions the consumer may have, including that the consumer should consult with the appropriate health care professional before proceeding with the training. Because a violation of the bill's provisions would be a crime, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.~~

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 6253.3 is added to the Government
- 2     Code, to read:
- 3     6253.3. Every state agency that publishes an Internet Web
- 4     site shall include on the homepage of that site, prominently
- 5     displayed without scrolling, the words "Public Information
- 6     Center," which shall be followed by, or shall link to on another
- 7     page, all of the following:
- 8     (a) Under the words "Whom to Contact," the name, title,
- 9     mailing address, telephone number, and e-mail address of the
- 10    public information officer or other person or persons to whom
- 11    requests for inspection or copying of records pursuant to the
- 12    California Public Records Act, or informal requests for simple
- 13    factual information, should be directed.
- 14    (b) Under the words "How to Request Records," the written
- 15    guidelines authorized or required under subdivision (a), and an

1 *HTML form for submitting online requests under the California*  
2 *Public Records Act, consisting of all of the following labeled*  
3 *fields:*

4 (1) *Today's date.*

5 (2) *My name (optional).*

6 (3) *My e-mail address (optional).*

7 (4) *My postal address (optional).*

8 (5) *My telephone number (optional).*

9 (6) *I am interested in the following records or information:*

10 (7) *Where can I inspect these records?*

11 (8) *Send me copies of the records without inspection.*

12 (9) *Send me a fee estimate before copying.*

13 *The HTML form shall be designed to send a copy of the request*  
14 *immediately and automatically to the e-mail address from which*  
15 *it was sent.*

16 (c) *Within 24 hours after its filing, under the words "Officials'*  
17 *Economic Interests," the most current statement of economic*  
18 *interests filed by every officer, employee, or consultant of the*  
19 *agency required to file such reports under Sections 87200 or*  
20 *87300.*

21 (d) *Within 24 hours after its effective date, under the words*  
22 *"Officials' Employment or Consulting Contracts," all terms of*  
23 *every employment, consulting, or other contract for services to*  
24 *which the agency and any individual are, or have been, parties in*  
25 *the current calendar year.*

26 (e) *Within 24 hours after its effective date, under the words*  
27 *"Lawsuit Settlements," the full text of every settlement of*  
28 *litigation, and of every agreement to compensate any person for*  
29 *foregoing litigation, involving the agency as a party within the*  
30 *current calendar year.*

31 (f) *Under the words "Records Disclosed This Year," a copy of*  
32 *every record disclosed by the agency without redaction within*  
33 *the current calendar year or, if the volume of records disclosed*  
34 *pursuant to a particular request exceeds 10 pages, a copy of the*  
35 *requester's own description of the records that were produced.*

36 (g) *Under the words "Records Withheld This Year," a copy of*  
37 *every letter or other communication to a requester denying*  
38 *access to all or part of any record, sent within the current*  
39 *calendar year.*

1     (h) Beginning January 1 of the second year after the effective  
2     date of this subdivision, under the word “Archive,” a link to a  
3     term-searchable archive of the items posted under subdivisions  
4     (c), (d), (e), and (f) in preceding years.

5     (i) Beginning three months from the effective date of this  
6     subdivision, any agency determined by the court to have failed to  
7     comply with the requirements of subdivision (a) or (b), or to have  
8     fallen more than 15 days behind in posting or archiving the  
9     information required under subdivisions (c), (d), (e), (f), (g), and  
10    (h), in addition to any other remedy to bring the agency into  
11    compliance with this subdivision, may be ordered by a court to  
12    post, immediately after the heading “Public Information  
13    Center,” under the words “Our Failure to Comply,” a copy of  
14    the court’s findings in such a compliance action. The duration of  
15    such posting shall rest with the sound discretion of the court, but  
16    in no case should be less than 30 days.

17    SEC. 2. Section 6258 of the Government Code is amended to  
18    read:

19    6258. Any person may institute proceedings for injunctive or  
20    declarative relief or writ of mandate in any court of competent  
21    jurisdiction to enforce his or her right to inspect or to receive a  
22    copy of any public record or class of public records under this  
23    chapter, *or to enforce the duty of a state agency to post*  
24    *information in its office and on its Internet Web site, if any, in*  
25    *compliance with Section 6253.3.* The times for responsive  
26    pleadings and for hearings in these proceedings shall be set by  
27    the judge of the court with the object of securing a decision as to  
28    these matters at the earliest possible time.

29    SEC. 3. Section 6259 of the Government Code is amended to  
30    read:

31    6259. (a) Whenever it is made to appear by verified petition  
32    to the superior court of the county where the records or some part  
33    thereof are situated that certain public records are being  
34    improperly withheld from a member of the public, the court shall  
35    order the officer or person charged with withholding the records  
36    to disclose the public record or show cause why he or she should  
37    not do so. The court shall decide the case after examining the  
38    record in camera, if permitted by subdivision (b) of Section 915  
39    of the Evidence Code, papers filed by the parties and any oral  
40    argument and additional evidence as the court may allow.

1 (b) If the court finds that the public official's decision to  
2 refuse disclosure is not justified under Section 6254 or 6255, he  
3 or she shall order the public official to make the record public. If  
4 the judge determines that the public official was justified in  
5 refusing to make the record public, he or she shall return the item  
6 to the public official without disclosing its content with an order  
7 supporting the decision refusing disclosure.

8 (c) In an action filed on or after January 1, 1991, an order of  
9 the court, either directing disclosure by a public official or  
10 supporting the decision of the public official refusing disclosure,  
11 is not a final judgment or order within the meaning of Section  
12 904.1 of the Code of Civil Procedure from which an appeal may  
13 be taken, but shall be immediately reviewable by petition to the  
14 appellate court for the issuance of an extraordinary writ. Upon  
15 entry of any order pursuant to this section, a party shall, in order  
16 to obtain review of the order, file a petition within 20 days after  
17 service upon him or her of a written notice of entry of the order,  
18 or within such further time not exceeding an additional 20 days  
19 as the trial court may for good cause allow. If the notice is served  
20 by mail, the period within which to file the petition shall be  
21 increased by five days. A stay of an order or judgment shall not  
22 be granted unless the petitioning party demonstrates it will  
23 otherwise sustain irreparable damage and probable success on the  
24 merits. Any person who fails to obey the order of the court shall  
25 be cited to show cause why he or she is not in contempt of court.

26 (d) The court shall award court costs and reasonable attorney  
27 fees to the plaintiff should the plaintiff prevail in litigation filed  
28 pursuant to this section. The costs and fees shall be paid by the  
29 public agency of which the public official is a member or  
30 employee and shall not become a personal liability of the public  
31 official. If the court finds that the plaintiff's case is clearly  
32 frivolous, it shall award court costs and reasonable attorney fees  
33 to the public agency.

34 (e) (1) *If a state or local agency (A) declines to comply with a*  
35 *request to inspect or copy a record that is publicly accessible*  
36 *pursuant to this chapter; (B) delays in responding to the request,*  
37 *or in producing the requested records, for reasons that are*  
38 *unstated to the requester, or that are unsupported by compelling*  
39 *circumstances, or that otherwise demonstrate a lack of the*  
40 *diligence required to make records available promptly, without*

1 *delay or obstruction, pursuant to the standards and deadlines of*  
2 *Section 6253; (C) imposes conditions precedent to access to*  
3 *records that are not authorized by this chapter, including, but not*  
4 *limited to, the payment of copy fees in excess of an applicable*  
5 *statutory fee or the direct cost of duplication pursuant to Section*  
6 *6253 or 6253.9; or (D) otherwise frustrates timely and complete*  
7 *access; and the court determines that the agency acted in bad*  
8 *faith or with knowledge that the request sought nonexempt*  
9 *records, the court, in its discretion, may make an award not to*  
10 *exceed one hundred dollars (\$100) per day for each day, as*  
11 *determined by the court, that the agency's action resulted in the*  
12 *denial of the plaintiff's right to copy or inspect the record or*  
13 *records in question.*

14 *(2) In determining the amount of an award under this*  
15 *subdivision, the court shall consider all the facts and*  
16 *circumstances surrounding the agency's decision, including, but*  
17 *not limited to, all of the following:*

18 *(A) Whether the agency unreasonably failed to respond within*  
19 *the time periods set forth in Section 6253 or otherwise engaged*  
20 *in conduct that caused undue delay.*

21 *(B) Whether the agency's justification for denying the request*  
22 *was reasonably based upon its perceived obligation to protect*  
23 *the rights of persons or entities identified in the requested*  
24 *records.*

25 *(C) Whether the agency has developed publicly accessible*  
26 *internal operating procedures or guidelines under Section*  
27 *6253.4.*

28 *(D) Whether the plaintiff acted in good faith in pursuing the*  
29 *request.*

30 *(E) Whether the agency's denial or other conduct inconsistent*  
31 *with this chapter was based on a reasonable interpretation of the*  
32 *law.*

33 *(f) If the court determines that the agency's unlawful denial or*  
34 *other conduct was not based on a reasonable interpretation of*  
35 *the law and was unsupported or uniformly contradicted by legal*  
36 *authority interpreting or applying this chapter, the award shall*  
37 *be the liability of the person named in the notification of denial*  
38 *pursuant to subdivision (d) of Section 6253, or if no such*  
39 *notification was made or the notification failed to name the*  
40 *responsible person, the liability of the chief executive officer of*

1 *the agency; or, if the denial or other conduct inconsistent with*  
2 *this chapter relied on the advice of counsel, of the attorney*  
3 *providing that advice. Where the plaintiff makes a preliminary*  
4 *showing that the agency's denial or other conduct was not based*  
5 *on a reasonable interpretation of the law and was unsupported*  
6 *or uniformly contradicted by legal authority interpreting or*  
7 *applying this chapter, legal counsel's advice or other*  
8 *communication concerning the request at issue shall not be*  
9 *privileged pursuant to Section 954 of the Evidence Code or any*  
10 *other provision of law.*

11 *(g) An award pursuant to this section shall not exceed a total*  
12 *of ten thousand dollars (\$10,000) for the record or records in*  
13 *question. The time basis for an award shall not include the*  
14 *period of time when a request for an opinion is pending with the*  
15 *Attorney General pursuant to Section 6257 or the period of time*  
16 *when a court is considering the plaintiff's petition.*

17 *SEC. 4. Section 6259.1 is added to the Government Code, to*  
18 *read:*

19 *6259.1. (a) Whenever it is made to appear by verified*  
20 *petition to the superior court of the county wherein the plaintiff*  
21 *resides that a state or local agency has failed to comply with the*  
22 *requirements of Section 6253.3, the court shall order the officer*  
23 *or person charged with posting the information as required by*  
24 *that section, or if no such person has been appointed, the senior*  
25 *officer in the agency, to effectuate compliance forthwith or show*  
26 *cause why he or she should not do so. The court shall decide the*  
27 *case after examining papers filed by the parties and any oral*  
28 *argument and additional evidence as the court may allow.*

29 *(b) If the court finds that the agency has failed to comply with*  
30 *Section 6253.3, he or she shall order the officer or person*  
31 *ordered to show cause to effectuate compliance forthwith.*

32 *(c) Upon entry of any order pursuant to this section, a party*  
33 *shall, in order to obtain review of the order, file a petition within*  
34 *20 days after service upon him or her of a written notice of entry*  
35 *of the order, or within such further time not exceeding an*  
36 *additional 20 days as the trial court may for good cause allow. If*  
37 *the notice is served by mail, the period within which to file the*  
38 *petition shall be increased by five days. A stay of an order or*  
39 *judgment shall not be granted unless the petitioning party*  
40 *demonstrates that it will otherwise sustain irreparable damage*

1 *and probable success on the merits. Any person who fails to obey*  
2 *the order of the court shall be cited to show cause why he or she*  
3 *is not in contempt of court.*

4 *(d) If the plaintiff prevails in an action filed pursuant to this*  
5 *section, the court shall award court and discovery costs and*  
6 *reasonable attorney's fees to the plaintiff. For the purposes of*  
7 *this subdivision, a plaintiff prevails, even in the absence of a*  
8 *judicial determination in his or her favor, if filing of the action is*  
9 *followed by the agency's coming into compliance with Section*  
10 *6253.3, provided that the plaintiff has made a written demand for*  
11 *compliance, sent to the agency at least 30 days prior to filing the*  
12 *action, including an unambiguous statement of the alleged facts*  
13 *of noncompliance and a warning that an enforcement action may*  
14 *follow. The costs and fees shall be paid by the state or local*  
15 *agency of which the public official is a member or employee and*  
16 *shall not become a personal liability of the public official. If the*  
17 *court finds that the plaintiff's case is clearly frivolous, it shall*  
18 *award court costs and reasonable attorney's fees to the agency.*

19 *(e) Commencing three months from the effective date of this*  
20 *subdivision, any agency determined by the court to have failed to*  
21 *comply with the requirements of subdivision (a) or (b) of Section*  
22 *6253.3, or to have fallen more than 15 days behind in posting or*  
23 *archiving the information required by subdivisions (c), (d), (e),*  
24 *(f), (g), and (h) of Section 6253.3, in addition to any order to*  
25 *bring the agency into compliance with these provisions, may be*  
26 *ordered to post on its homepage, immediately after the heading*  
27 *"Public Information Center," under the words "Our Failure to*  
28 *Comply," a copy of the court's findings and order. The duration*  
29 *of this posting shall rest with the sound discretion of the court,*  
30 *but in no case may be less than 30 days.*

31 ~~SECTION 1. Section 2620 of the Business and Professions~~  
32 ~~Code is amended to read:~~

33 ~~2620. (a) Physical therapy means the art and science of~~  
34 ~~physical or corrective rehabilitation or of physical or corrective~~  
35 ~~treatment of any bodily or mental condition of any person by the~~  
36 ~~use of the physical, chemical, and other properties of heat, light,~~  
37 ~~water, electricity, sound, massage, and active, passive, and~~  
38 ~~resistive exercise, and shall include physical therapy evaluation,~~  
39 ~~treatment planning, instruction and consultative services. The~~  
40 ~~practice of physical therapy includes the promotion and~~



1 maintenance of physical fitness to enhance the bodily movement  
2 related health and wellness of individuals through the use of  
3 physical therapy interventions. The use of roentgen rays and  
4 radioactive materials, for diagnostic and therapeutic purposes,  
5 and the use of electricity for surgical purposes, including  
6 cauterization, are not authorized under the term “physical  
7 therapy” as used in this chapter, and a license issued pursuant to  
8 this chapter does not authorize the diagnosis of disease.

9 (b) Nothing in this section shall be construed to restrict or  
10 prohibit other healing arts practitioners licensed or registered  
11 under this division from practice within the scope of their license  
12 or registration.

13 (c) (1) Nothing in this section prohibits an individual not  
14 licensed or registered under this division from providing  
15 assistance and advice to a consumer regarding physical fitness,  
16 including developing training regimens and implementing and  
17 maintaining those regimens.

18 (2) An individual who provides services pursuant to this  
19 subdivision shall disclose to the consumer that injuries, ailments,  
20 or medical conditions that the consumer may have could affect  
21 implementation and maintenance of the training regimen, and  
22 that the consumer should consult with the appropriate health care  
23 professional before proceeding with the training.

24 SEC. 2. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the  
29 penalty for a crime or infraction, within the meaning of Section  
30 17556 of the Government Code, or changes the definition of a  
31 crime within the meaning of Section 6 of Article XIII B of the  
32 California Constitution.